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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re PAUL M., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B171236
(Super. Ct. No. J64690)
(Ventura County)

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL M.,

Defendant and Appellant.

Paul M. appeals from the order sustaining the petition which alleged that he possessed a marking substance with the intent to commit graffiti in violation of Penal Code section 594.2, subdivision (a). (Welf. & Inst. Code, § 602.) Paul contends there is insufficient evidence that he intended to use the paint tube he possessed to create graffiti at his school. We affirm.

Facts

Around 6:30 a.m. on May 21, 2003, Rene Martinez, the lead grounds maintenance worker at Hueneme High School, discovered and removed orange graffiti from lockers at the back of the school. Shortly thereafter, Martinez noticed two boys in the area who appeared to be speaking with one another. As he approached the boys,

Martinez saw Paul quickly hand something to the other boy who put the object under the waistband of his sweats.

Martinez asked the other boy, Oscar R., what he had just taken from Paul. Oscar lifted his shirt and removed a tube of paint, which was the same color as the graffiti Martinez had just removed from the lockers. At that time Martinez noticed that Paul possessed a folder or book.

Oscar testified that Paul had called him over from the school track that morning and said, "look what I got." Paul showed Oscar the tube of paint and handed it to him, saying he had "already hit up" the school.¹ According to Oscar, as Martinez approached the boys, Paul panicked, handed him the tube, and told him to hide it in his pants. Before Oscar could place the tube of paint completely down his pants, Martinez asked for it.

Officer Joe Tinoco, the school resource officer, testified that he interviewed Paul later on May 21, 2003. According to Officer Tinoco, Paul told him he had found the paint tube on school grounds, but admitted that he tried to conceal the notebook, knowing he should not have it. Officer Tinoco testified that he looked through the notebook and found that it contained tagging and graffiti markings. The officer also testified that the tube had orange paint in it which was still soft.

The court sustained the petition charging Paul with possession of a marking substance with the intent to commit vandalism or graffiti, and made him a ward of the juvenile court. This appeal ensued.

Discussion

Paul contends there was insufficient evidence that he intended to create graffiti with the paint in the tube. In assessing whether there is substantial evidence to support a judgment sustaining a juvenile petition which alleges criminal conduct, we apply the same standard of review used in adult criminal appeals. (*In re Ryan N.* (2001)

¹ Oscar testified that the term "hit up" means writing or tagging (graffiti).

92 Cal.App.4th 1359, 1371.) We review the entire record in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of Penal Code section 594.2, subdivision (a) beyond a reasonable doubt. (*Ryan N.*, at p. 1371.) Section 594.2, subdivision (a) makes it illegal to possess "any . . . marking substance with the intent to commit vandalism or graffiti." If there is any evidence that would justify a finding of specific intent to create graffiti, we may not reverse, even if the facts and circumstances reasonably could be reconciled with a contrary finding. (*Ryan N.*, at pp. 1372-1373; *People v. Rodriguez* (1969) 272 Cal.App.2d 80, 86.)

Paul concedes he possessed the paint tube on May 21, 2003. Therefore, the only issue is whether there is substantial evidence he intended to use the paint to create graffiti. The element of intent is rarely susceptible of direct proof. Usually, it must be inferred from the facts and circumstances of the case. (*People v. Williams* (1967) 252 Cal.App.2d 147, 154-155.) Specific intent may be proved by circumstantial evidence, and any reasonable inferences which may be derived from such evidence. (*People v. White* (1969) 71 Cal.2d 80, 83; *People v. Castellanos* (2003) 110 Cal.App.4th 1489, 1493-1494 [possession of blank sheets of selective service cards and instructions on making California driver's licenses sufficient to establish intent to defraud]; *In re Man J.* (1983) 149 Cal.App.3d 475, 482 [footprints/dents on four or five vehicles near defendant's, and admission of running across several cars, sufficient to support malicious mischief and to infer defendant had knowledge of intent of others to damage the cars for aider and abettor liability].)

Martinez testified that shortly after he removed the paint from the lockers, he noticed Paul and Oscar in the area. As Martinez approached them, appellant quickly and furtively handed Oscar an object to hide. When Martinez confronted them, Oscar produced the tube of orange-colored marking paint before he could completely conceal it in his pants.

Oscar testified that just before Martinez approached them, Paul told him he "hit up" the school. Appellant panicked, handed Oscar the paint tube, and told him to

hide it. Officer Tinoco testified that appellant told him he tried to conceal the notebook which contained sample tagging and graffiti marks because he knew he should not have it.

We conclude there is substantial evidence from which a reasonable trier of fact could infer that appellant possessed the paint with the intent to create graffiti. Appellant's panic, his attempt to hide these materials, his admission to police that he knew he should not possess them, and his use of "tagger" lingo, all support the judgment. Although other conclusions could have been drawn from this evidence at trial, the substantial evidence rule requires us to affirm the judgment on appeal.

Appellant also argues that evidence of the orange graffiti on the school buildings should not have been admitted because it improperly shows his propensity to commit the crime. Because appellant did not object to the admission of this evidence at trial, this assignment of error is waived. (Evid. Code, § 353; see generally *People v. Boyette* (2002) 29 Cal.4th 381, 424; *People v. Hayes* (1999) 21 Cal.4th 1211, 1261.) Moreover, evidence of appellant's prior act of graffiti is admissible as circumstantial evidence of his preparation, intention and opportunity to create graffiti at the school. (Evid. Code, § 1101, subd. (b).)

Accordingly, we affirm the order sustaining the petition and adjudging appellant a ward of the court.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

John E. Dobroth, Judge
Superior Court County of Ventura

California Appellate Project, Jonathan B. Steiner, Executive Director, Richard B. Lennon, Staff Attorney, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters, Supervising Deputy Attorney General, Ryan M. Smith, Deputy Attorney General, for Plaintiff and Respondent.